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August 21, 2013

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano,

I write regarding the recent surge in foreign nationals, largely from Mexico, claiming asylum at U.S. ports of entry. This surge has been overwhelming Border Patrol agents in San Diego, California. Border Patrol agents reported that in one day 200 aliens came through the Otay Mesa, San Diego port of entry while as many as 550 overflowed the processing center there and in nearby San Ysidro claiming a "credible fear" of the drug cartels in Mexico.

According to testimony prepared by Joseph Langlois, Associate Director of the Refugee, Asylum, and International Operations Directorate, at United States Citizenship and Immigration Services (USCIS), which was to be provided before the Subcommittee on National Security of the House Oversight and Government Reform Committee on June 27, 2013:

"USCIS has experienced an unprecedented surge in the credible fear workload, as credible fear requests have increased from 5,369 in fiscal year 2009 to 19,119 referrals through May of Fiscal Year 2013. If present trends continue, USCIS estimates that we will receive a total of 28,679 credible fear requests in FY 2013, a 434% increase over the last five years."

Additionally, the House Judiciary Committee received disturbing statistics from USCIS indicating that the number of illegal immigrants intercepted at ports-of-entry and along the border claiming asylum is increasing exponentially. Such claims have increased from 5,222 in 2009 to 23,408 in just the first three quarters of 2013. According to the most recent data available, DHS is permitting 92% of these claimants to move forward to further proceedings, despite the fact that press reports indicate that up to 91% of these claimants from Mexico are ultimately denied. In addition, most are likely being released into the U.S. pending further proceedings before Immigration Judges as opposed to being detained as required by law.

I am concerned that credible fear claims are being exploited by illegal immigrants in order to enter and remain in the United States. As you know, after an alien is encountered by the

Border Patrol, USCIS conducts a screening interview to determine whether the alien has a fear of returning to their home country. The finding of "credible fear" is the start of the process for certain aliens to raise an asylum claim. After such a finding, the alien is issued a notice to appear in immigration court where they must prove that their fear of return to their home country is based on persecution under a statutorily protected ground and is in fact a legitimate asylum case. However, once these aliens receive court dates, they often fail to appear for immigration court proceedings and end up disappearing into the United States.

As reported by the press, Immigration and Customs Enforcement (ICE) sources indicate that addresses provided to authorities by aliens who claim credible fear are often fake. Those who fail to appear in court are ordered removed by an Immigration Judge in absentia. To make matters worse, according to information provided to me by ICE, there are approximately 500,000 aliens who remain in the U.S. despite final orders of removal.

The recent press accounts indicate that aliens are being coached in the asylum process and are being taught to use certain terms to ensure that they are found to have a credible fear as a threshold for an asylum case. The aliens allegedly claim that they have a credible fear of return to Mexico based on drug cartel and gang violence. According to critics, asylum claims from Mexico are highly unusual and often are an orchestrated sham. Indeed, as mentioned before, reports indicate that as many as 91 percent of asylum claims from Mexico are ultimately denied. Critics allege that the purpose is not to obtain asylum, but rather to game the system by getting a free pass into the U.S. and a court date that they do not plan to show up for.

Not only is the rise in credible fear claims concerning, but I am concerned with the inability of the Administration to follow the current law that pertains to the asylum process. Pursuant to §235(b)(1)(B) of the Immigration and Nationality Act (INA), arriving aliens are subject to mandatory detention whether they are found to have credible fear or not. An "arriving alien" is a person who was stopped by U.S. officers at a port of entry while attempting to enter the U.S. Under the statute and corresponding regulations at 8 C.F.R. §235.3, under limited circumstances "parole" from detention is available for arriving aliens where the applicant can show parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. Additionally, an applicant can be paroled where there are urgent humanitarian reasons or a significant public benefit consistent with §212(d)(5) of the INA. Any such alien should also be detained pending a credible fear interview.

However, this process has been changed by the current Administration via executive fiat. On December 9, 2010, Director Morton issued an ICE policy directive that is contrary to the statute and the regulations. Under this policy directive, any arriving alien who has been found to have a credible fear and can establish identity, that they are not a flight risk, or a danger to the community, should be released by ICE. The memo required ICE field offices to document the parole decisions in a "*Record of Determination /Parole Determination worksheet*." This is inconsistent with the Congressional mandate in statute that requires detention.

And not surprisingly, the timing of this memo appears to correlate with the uptick of credible fear claims in recent years. Additionally, while ICE is not detaining these aliens, Fiscal Year 2012 Executive Office of Immigration Review statistics demonstrate that 29% of released aliens failed to appear for their immigration court proceedings.

Once again the Administration has chosen to turn the immigration enforcement switch off in a manner contrary to the intent of Congress, by simply enforcing the immigration laws when, where, and as it is deemed fit. Such actions are the primary reason why our immigration system is broken today. We plan to conduct oversight of this issue and address concerns via the House's step-by-step approach to reforming our immigration system. Hence, we request a briefing with the relevant Department of Homeland Security components.

Thank you for your attention to this matter. Should you require additional information regarding this issue and to coordinate with staff in order to arrange the briefing, please contact House Judiciary Committee Counsel Dimple R. Shah at 202-225-3926.

Sincerely,

Bob Goodlatte
Chairman
House Committee on the Judiciary